

TANF: FINAL RULE

Prepared for the
Legislative Finance Committee
by

Lorene Thorson, Associate Fiscal Analyst
September 23, 1999



PURPOSE

The purpose of this report is to inform the Legislative Finance Committee of: 1) the differences, significant to Montana, between the new federal rule regarding the Temporary Assistance for Needy Families (TANF) program and the TANF proposed regulations; 2) how the TANF final rule will impact the Department of Health and Human Services' (department) ability to spend the current year TANF block grant and the TANF block grant reserves in accordance with the Fifty-sixth Legislature's intent; and 3) the challenges the department faces in achieving the 77 percent maintenance of effort requirement.

BACKGROUND

In 1996, the federal government enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) to replace open-ended entitlements and create block grants for states to provide time-limited cash assistance to needy families with work requirements for most recipients. States were given flexibility to design their TANF programs in ways to promote work, responsibility, and self-sufficiency, and to strengthen families. Montana's approved TANF program is the Families Achieving Independence in Montana (FAIM) program.

The amount of Montana's annual TANF block grant is based upon previous expenditures in Aid to Families with Dependent Children (AFDC), Emergency Assistance (EA), and JOBS programs. In order to receive the entire block grant allotment, states must expend general fund equal to 80 percent of the amount of non-federal funds they spent in federal fiscal year 1995 on AFDC and related programs. If the mandatory work participation rates are met, then a state's required maintenance of effort (MOE) is reduced to 75 percent of the federal fiscal year 1995 level. Because Montana has been successful in meeting the required work participation rates in past years, the 1999 legislature reduced MOE to 77 percent, or \$15.6 million.

The number of AFDC families in Montana peaked in 1994 at approximately 11,800 cases and dropped to approximately 4,600 cases in 1999. A study from the Council of Economic Advisors found that welfare reform has been the single most important factor in reducing welfare rolls nationwide. The Council estimated that welfare reform accounts for approximately one-third of the caseload decline from 1996 to 1998, while the strong economy accounts for about 10 percent of the decline.¹ In Montana, the drop in cash assistance caseloads largely contributed to unspent block grant funds of approximately \$33.0 million by the end of 1999. Money that a state does not spend in a given year still belongs to the state, but it remains in the federal treasury. States can spend it in later years, but after October 1, 1999, they can use these carryover funds only

for “assistance” and for the administrative costs directly associated with providing such assistance (subject to a 15 percent cap).

PROPOSED REGULATIONS vs. FINAL RULE

State agencies and the legislature relied on the proposed regulations for two years and eight months before final regulations governing the TANF block grant were released in April, 1999. The changes in the final rule that will have the most significant impact on Montana’s FAIM program include: 1) the definition of “assistance”. Under the final rule, “assistance” is defined to include: “cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).”² This new, limited definition will increase the state’s ability to help low-income working families, but will significantly restrict the expenditure of unspent reserve funds; and 2) a change regarding “qualified state expenditures”. This will affect the department’s ability to count \$1.1 million spent each year on foster care emergency costs towards the MOE requirement.

Assistance

Pros – As stated, the new definition of “assistance” should have a positive impact on the state’s ability to spend TANF funds to help low-income working families. Because the final rule limits the definition of “assistance” to cash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs, it will now be easier for a state to use TANF funds to help needy families not receiving cash assistance and provide a range of supports without running the 60-month TANF time clock, without triggering assignment and retention of child support, and without triggering the work requirements or data collection requirements that apply to TANF “assistance”.

Cons - “. After October 1, 1999, when the rule goes into effect, the department can only spend the TANF reserves for services that meet the definition of “assistance”. In the past, Montana TANF reserve funds could be used for enhanced employment services or other supportive services needed to meet work participation rates. Based on this understanding, the 1999 legislature approved spending \$33.7 million in reserve funds on a variety of services which met those guidelines. Under the final rule, the reserve funds can no longer provide these services.

Qualified State Expenditures

The final rule states that a state may expend federal funds, but not state MOE funds, for activities that were previously authorized under its IV-A or IV-F plans (AFDC, JOBS, Emergency Assistance, Child Care for AFDC recipients, At-Risk Child Care, or Transitional Child Care programs), but which are not otherwise allowable under TANF. This change affects the ability of the department to count towards MOE the approximately \$1.1 million per year of general fund money expended on foster care emergency assistance costs (see the section on Maintenance of Effort for more detail).

EXPENDITURE OF CURRENT YEAR BLOCK GRANT FUNDS AND TANF RESERVES

As stated earlier, after October 1, 1999, states can spend funds carried over from previous years only on “assistance”. This means that states spending a substantial amount of TANF funds on activities not considered assistance – such as work supports – must serve those families with current-year TANF funds and not with funds carried over from previous years.

As shown in Table 1, the majority of the \$33.7 million in reserve funds that was appropriated for a broad range of services no longer meet the definition of “assistance” under the final rule. Therefore, unless the department can spend, transfer, or obligate the \$33.7 million by September 30, 1999, for the purposes shown in the table, the department will have to establish a plan to use current year funds for these services and use the reserve funds for “assistance”.

States may transfer up to 30 percent of the total grant amounts to either the Child Care Development Fund (CCDF) Block Grant or the Social Services Block grant program. No more than one-third of the amount transferred (or 10 percent of the total grant amount) may go to the Social Services Block grant (beginning federal fiscal year 2001, this drops to 4.25 percent). The legislature approved transferring \$15.2 million of TANF reserve funds to the CCDF over the 2001 biennium (this is within the 30 percent limit). Because the final rule prevents use of reserve funds for anything other than “assistance”, this amount would need to be transferred to the CCDF prior to October 1, 1999. As of September 8, 1999, the department had transferred \$12.5 million to child care. Once it is transferred, it takes on the attributes of the child care block grant, which means the \$12.5 million would need to be obligated within two years of the date it was transferred and expended by the third year.

Over \$37.0 million was appropriated for child care in the 2001 biennium and another \$15.2 million of the reserve TANF funds was designated for child care in the 2001

Table 1 Services Approved by the 1999 Legislature to be Funded with TANF Reserve Monies		
Purpose	Biennial Appropriation (in Millions)	Can Reserve Funds be Used Under Final Rule?
Rainy Day reserve	\$8.35	Yes (if in compliance with HB2 language & assuming entire amount used for assistance)
Assist families leaving FAIM and transfers to child care	16.87	No (only if transferred to child care by 9-30-99)
Address serious barriers for long-term FAIM recipients	6.50	No
Provide funds for energy assistance and food banks	2.00	No
Total Reserve Fund	\$33.72	

biennium, for a total of more than \$52.0 million. This represents a 226 percent increase from the amount expended in the 1999 biennium where just over \$23.0 million was spent on child care. This may raise an issue as to whether this amount can be responsibly spent within the time limitations. Any amount of the \$15.2 million that has not been expended at the end of the time period will roll back to TANF reserves to be used for “assistance”.

MAINTENANCE OF EFFORT

Prior to release of the final rule, approximately \$1.1 million of general fund money that would be expended on foster care emergency assistance costs each year of the 2001 biennium was to be counted towards the state’s maintenance of effort. The department operated under the understanding that if expenditures had previously been authorized and were allowable under the former IV-A or IV-F plans, they were allowable to be counted toward the state’s MOE. The final rule states that a state may expend federal funds, but not state MOE funds, for activities that were previously authorized under its IV-A or IV-F plans, but which are not otherwise allowable under TANF. Therefore, DPHHS will transfer federal TANF dollars to fund these services in the Child and Family Services Division rather than use general fund. The general fund appropriated for these services will be transferred to the Human and Community Services Division to be spent on services that meet the MOE criteria.

Several additional factors came to light as the 1999 session was concluding that will affect the ability of the department to meet the maintenance of effort requirement: 1) the child care match can not be counted towards MOE; 2) the 1999 legislature passed HB 676, which capped the non-assumed counties’ share of TANF expenditures; and 3) the most current random moment time study shows a 10-13 percent drop in time spent on TANF-related cases. (More information on the mentioned three items can be found in the Legislative Fiscal Report, 2001 Biennium, Volume 1, page B-19.)

The total impact of all of the above factors could result in a biennial shortfall to the MOE requirement of over \$5.0 million. If the department is not able to meet the 75 percent federal maintenance of effort requirement (the state MOE requirement is 77 percent, but federal penalties will only be applied if the department does not meet the federal MOE requirement of 75 percent), it will be subject to the following penalties:

- 1) the state’s TANF grant will be reduced dollar-for-dollar to the extent of noncompliance in the subsequent year;
- 2) the state will be required to expend additional state funds in its TANF program equal to the amount of the MOE shortfall; and
- 3) if the state received a Welfare-to-Work formula grant in the year which MOE was not met, the state’s TANF grant in the subsequent year will be reduced by the amount of the state’s Welfare-to-Work formula grant.³

CONCLUSION

It appears the primary challenge facing the department is not the effect of the final rule, but the ability to meet the 75 percent federal maintenance of effort requirement. In order to meet the maintenance of effort requirement, the department will either have to find other funds already being spent that may qualify, or direct funds appropriated for other purposes to functions that qualify as maintenance of effort.⁴

While the final rule contains some significant changes from the proposed regulations, the overall impact to Montana's FAIM program should be minimal, except for excessive data reporting requirements. The major affect will be to cause the department to adjust the source of the funds (current year vs. reserve funds) to conform with the final rule in a manner that will allow it to provide the services approved by the 1999 legislature.

The state may face another challenge as Congress has once again targeted unspent TANF funds. The Senate appropriations subcommittee with jurisdiction over labor, health and education programs may propose an across-the-board cut in TANF, the CHIP program, the Title XX Social Services Block Grant, and administrative and matching money for Medicaid, food stamps, child support and foster care to achieve up to \$15 billion in savings.⁵ If this cut occurs, current year funds would have to be used for assistance (rather than reserve funds). A determination would then have to be made as to which services would be provided with any remaining funds. Obviously, there would not be sufficient funds to provide the broad range of services approved by the legislature.

As of the writing of this paper, the department has not formalized a strategy as to how current year and reserve TANF funds will be used to provide the services that the 1999 legislature approved, nor how the MOE requirement will be met in the 2001 biennium. The department has been asked to address these issues and the questions that were addressed in the attached letter to Mr. Hudson.

ENDNOTES

¹ Marie Cohen, "Clinton Lauds Welfare Reform; Urges Congress to Leave the Money," *CLASP Update*, August 25, 1999: 1-2.

² 45 C.F.R. §260.31(a).

³ Mark Greenberg, "The TANF Maintenance of Effort Requirement," *CLASP*, June 1999: 1.

⁴ There is currently legislation before Congress that encourages states to "pass through" child support payments to families. In addition, a state adopting this "pass through" policy could claim support distributed to the family as part of its maintenance-of-effort spending. (Currently, if a family receives TANF-funded assistance, any child support collected on their behalf is split between the state and federal governments based on the Medicaid match rate). If this legislation passes, another resource for meeting MOE would be available to the state.

⁵ "TANF, CHIP, Medicaid Cuts on the Horizon?", *National Conference of State Legislatures Capitol to Capitol*, Vol. 6, #30, September 7, 1999: 1.